

The only issue before the Board on this appeal is whether the special hazard exception to the going and coming rule applies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes that the May 1, 2002 Order should be affirmed. The Judge provided detailed findings and conclusions in the Order, which the Board adopts as its own.

The going and coming rule set forth in K.S.A. 2001 Supp. 44-508(f) provides:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .

The plain language of the statute requires the accident to occur "on the only available route to or from work" before the special hazard exception to the rule would apply. As explained by the Judge, there is no question that claimant could have traveled another route from the bridge construction site to the highway that he normally took to drive home.

WHEREFORE, the Board affirms the May 1, 2002 Order entered by Judge Sample.

IT IS SO ORDERED.

Dated this ____ day of June 2002.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Roger E. McClellan, Attorney for Respondent and its Insurance Carrier
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Workers Compensation Director